United States Court of Appeals

for the Second Circuit

APPENDIX

B
P/S

74-2178

IN THE

United States Court of Appeals

FOR THE SECOND CIRCUIT

COLONIE HILL LTD.,

Petitioner,

v.

NATIONAL LABOR RELATIONS BOARD,

ON REVIEW FROM THE NATIONAL LABOR RELATIONS BOARD

Respondent.

APPENDIX

HYNES & DIAMOND
Attorneys for Petitioner
25 Broadway
New York, New York 10004

3

PAGINATION AS IN ORIGINAL COPY

INDEX

DOCKET ENTRIES

UNITED STATES COURT OF APPEALS

FOR THE SECOND CIRCUIT

COLONIE HILL LTD., Petitioner,	)	
v.	)	No. 74-2178
NATIONAL LABOR RELATIONS BOARD, Respondent.	)	

CERTIFIED LIST OF THE NATIONAL LABOR RELATIONS BOARD

The National Labor Relations Board, by its Executive Secretary duly authorized by Section 102.115, Rules and Regulations of the National Labor Relations Board - Series 8, hereby certifies that the list set forth below constitutes a full and accurate transcript of the entire record of a proceeding had before said Board and known upon its records as Case Nos. 29-CA-3457 and 29-CA-3462. Such transcript includes the pleadings and testimony and evidence upon which the Order of the Board was entered and includes also the findings and order of the Board.

VOLUME I - Exhibits indtrduced into evidence at the Hearing:

GENERAL COUNSEL'S EXHIBIT NOS:

1 (A) through 1 (K)

2 through 8

9 and 10

RESPONDENT'S EXHIBIT NOS:

1 and 2

VOLUME II

CERTIFIED RECORD

Stenographic transcript of testimony taken before Administrative Law, Judge George J. Bott on December 17 and 18, 1973... 1 - 180

Docket Entries

VOLUME III - Pleadings

1.	Copy of Administrative Law Judge's Decision issued February 25, 1974.....	1 - 16
2.	Copy of General Counsel's Exceptions to the Administrative Law Judge's Decision, received April 8, 1974.....	1 - 5
3.	Copy of Petitioner's[1/] Cross-Exceptions to Administrative Law Judge's Decision, received April 22, 1974.....	1 - 15
4.	Copy of Decision and Order of the National Labor Relations Board on August 6, 1974.....	1 - 5

IN TESTIMONY WHEREOF, the Executive Secretary of the National Labor Relations Board, being thereunto duly authorized as aforesaid, has hereunto set his hand and affixed the seal of the National Labor Relations Board in the city of Washington, District of Columbia, this 11th day of October, 1974

/s/ John C. Truesdale
John C. Truesdale
Executive Secretary
NATIONAL LABOR RELATIONS BOARD

(SEAL)

1/ Petitioner herein was Respondent before the Board.

A 3

CHARGE AGAINST EMPLOYER (SQUICCIARINI)

GEN. COUNSEL EX. # 1-A

FORM NLRB-501
(2-67)

Form Approved
Budget Bureau No. 64-R001.12

UNITED STATES OF AMERICA
NATIONAL LABOR RELATIONS BOARD

CHARGE AGAINST EMPLOYER

INSTRUCTIONS: File an original and 4 copies of this charge with NLRB regional director for the region in which the alleged unfair labor practice occurred or is occurring.

DO NOT WRITE IN THIS SPACE

Case No. 29-CA-3457

Date Filed 6-26-73

1. EMPLOYER AGAINST WHOM CHARGE IS BROUGHT

a. Name of Employer: **Colonie Hill, Ltd.**

b. Number of Workers Employed: **100**

c. Address of Establishment (Street and number, city, State, and ZIP code): **1717 Motor Parkway, Hauppauge, N.Y.**

d. Employer Representative to Contact: **Peter Papilatanio**

e. Phone No.: **516-234-7800**

f. Type of Establishment (Factory, mine, wholesaler, etc.): **Motel and catering facility**

g. Identify Principal Product or Service: **Food, Entertainment & Lodging**

h. The above-named employer has engaged in and is engaging in unfair labor practices within the meaning of section 8(a), subsections (1) and **(3)** (List subsections) of the National Labor Relations Act, and these unfair labor practices are unfair labor practices affecting commerce within the meaning of the Act.

2. Basis of the Charge (Be specific as to facts, names, addresses, plants involved, dates, places, etc.)

Since on or about June 25, 1973, the above-named Employer, by its officers, agents and representatives, terminated the employment of MAURO SQUICCIARINI because of his protected, concerted activities.

By the above and other acts, the above-named employer has interfered with, restrained, and coerced employees in the exercise of the rights guaranteed in Section 7 of the Act.

3. Full Name of Party Filing Charge (If labor organization, give full name, including local name and number)

Mauro Squicciarini

4a. Address (Street and number, city, State, and ZIP code): **8 Gaynor Avenue, Nesconset, N.Y. 11767**

4b. Telephone No.: **516-265-6542**

5. Full Name of National or International Labor Organization of Which It Is an Affiliate or Constituent Unit (To be filled in when charge is filed by a labor organization)

6. DECLARATION

I declare that I have read the above charge and that the statements therein are true to the best of my knowledge and belief.

By **/s/ Mauro Squicciarini** (Signature of representative or person filing charge) — **Individual** (Title, if any)

Address **8 Gaynor Ave, Nesconset, NY** — **516-265-6542** (Telephone number) — **6/26/73** (Date)

WILLFULLY FALSE STATEMENTS ON THIS CHARGE CAN BE PUNISHED BY FINE AND IMPRISONMENT (U.S. CODE, TITLE 18, SECTION 1001)

A 4

CHARGE AGAINST EMPLOYER (STAATS) GEAL COUNTERPART

FORM NLRB-501 (2-67)

Form Approved
Budget Bureau No. 64-R001.12

UNITED STATES OF AMERICA
NATIONAL LABOR RELATIONS BOARD

CHARGE AGAINST EMPLOYER

INSTRUCTIONS: File an original and 4 copies of this charge with NLRB regional director for the region in which the alleged unfair labor practice occurred or is occurring.

DO NOT WRITE IN THIS SPACE

Case No. 29-CA-3462

Date Filed 7-3-73

1. EMPLOYER AGAINST WHOM CHARGE IS BROUGHT

a. Name of Employer: Colonie Hill, Ltd.

b. Number of Workers Employed: 100

c. Address of Establishment (Street and number, city, State, and ZIP code): 1717 Motor Parkway, Hauppauge, N.Y.

d. Employer Representative to Contact: Peter Mapilatanie

e. Phone No.: 516-234-7800

f. Type of Establishment (Factory, mine, wholesaler, etc.): Motel and catering facility

g. Identify Principal Product or Service: Food, Entertainment & Lodging

h. The above-named employer has engaged in and is engaging in unfair labor practices within the meaning of section 8(a), subsections (1) and (3) (List subsections) of the National Labor Relations Act, and these unfair labor practices are unfair labor practices affecting commerce within the meaning of the Act.

2. Basis of the Charge (Be specific as to facts, names, addresses, plants involved, dates, places, etc.)

On or about April 1, 1973 the above named employer reduced the salary of James Staats, and Werner Eckart, because of their support of Local 30, Operating Engineers AFL-CIO, their opposition to Local 100 Service Employees Union AFL-CIO, and other protected concerted activities.

By the above and other acts, the above-named employer has interfered with, restrained, and coerced employees in the exercise of the rights guaranteed in Section 7 of the Act.

3. Full Name of Party Filing Charge (If labor organization, give full name, including local name and number): James Staats

4a. Address (Street and number, city, State, and ZIP code): 9 43rd Street, Islip, N.Y.

4b. Telephone No.: 516-518-3436

5. Full Name of National or International Labor Organization of Which It Is an Affiliate or Constituent Unit (To be filled in when charge is filed by a labor organization)

6. DECLARATION

I declare that I have read the above charge and that the statements therein are true to the best of my knowledge and belief.

By /s/ James Staats (Signature of representative or person filing charge) — An Individual (Title, if any)

Address 9 43rd Street, Islip, N.Y. — 516-518-3436 (Telephone number) — July 3, 1973 (Date)

WILLFULLY FALSE STATEMENTS ON THIS CHARGE CAN BE PUNISHED BY FINE AND IMPRISONMENT (U.S. CODE, TITLE 18, SECTION 1001)

☆ GPO 473-109

ORDER CONSOLIDATING CASES, COMPLAINT AND NOTICE OF HEARING

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 29

COLONIE HILL LTD.

and

MAURO SQUICCIARINI — Case No. 29-CA-3457

and

JAMES STAATS — Case No. 29-CA-3462

and

LOCAL 100 SERVICE EMPLOYEES
INTERNATIONAL UNION, AFL-CIO

Party in Interest

ORDER CONSOLIDATING CASES, COMPLAINT AND NOTICE OF HEARING

It having been charged in Case No. 29-CA-3457 by Mauro Squicciarini, herein called Squicciarini that Colonie Hill Ltd., herein called Respondent, and in Case No. 29-CA-3462 by James Staats, herein called Staats that Respondent has engaged in, and is engaging in, certain unfair labor practices affecting commerce as set forth and defined in the National Labor Relations Act, as amended 29 U.S.C., Sec. 151, et seq., herein called the Act, the General Counsel of the National Labor Relations Board, herein called the Board, by the undersigned Regional Director for Region 29, having duly considered the matter and deeming it necessary in order to effectuate the purposes of the Act, and to avoid unneccessary costs or delay,

HEREBY ORDERS, pursuant to Section 102.33 of the Board's Rules and Regulations - Series 8, as amended that these cases be, and they hereby are, consolidated.

Said cases having been colsolidated, the General Counsel of the Board, on behalf of the Board, by the undersigned Regional Director pursuant to Section 10(b) of the Act and the Board's Rules and Regulations - Series 8, as amended Section 102.15 hereby issues this Consolidated Complaint and Notice of Hearing and alleges as follows:

1. (a) The Charge in Case No. 29-CA-3457 was filed by Squicciarini on June 26, 1973, and served by registered mail upon Respondent on or about June 26, 1973.

(b) The Charge in Case No. 29-CA-3462 was filed by Staats on July 3, 1973 and served by registered mail upon Respondent on or about July 3, 1973.

2. Respondent is, and has been at all times material herein, a corporation duly organized under, and existing by virtue of, the laws of the State of New York.

3. At all times material herein, Respondent has maintained its principal place of business at 1717 Motor Parkway, in the County of Suffolk, Town of Hauppauge, and State of New York, herein called the Hauppauge facility where it is, and has been at all times material herein, continuously engaged in the operation of a motel, restaurant, golf course, catering hall, and in performing related services.

4. (a) During the past year, which period is representative of its annual operations generally, Respondent in the course and conduct of its operations, derived gross revenues therefrom in excess of $500,000.

(b) During the past year, which period is representative of its annual operations generally, Respondent in the course and conduct of its business, purchased and caused to be transported and delivered to its Hauppauge facility food, liquor and other goods and materials valued in excess of $50,000 of which goods and materials valued in excess of $50,000 were transported and delivered to its facility in interstate commerce directly from states of the United States other than the state in which it is located.

5. Respondent is, and has been at all times material herein, an employer engaged in commerce within the meaning of Section 2(2), (6) and (7) of the Act.

6. (a) Local 100 Service Employees International Union, AFL-CIO, herein called Local 100 is, and has been at all times material herein, a labor organization within the meaning of Section 2(5) of the Act.

(b) Local 30, International Union of Operating Engineers, AFL-CIO, herein called Local 30, is, and has been at all times material herein, a labor organization within the meaning of Section 2(5) of the Act.

(c) Plumbers Local Union 775 of United Association of the Plumbing and Pipe Fitting Industry of United States and Canada, AFL-CIO, herein called Local 775, is, and has been at all times material herein, a labor organization within the meaning of Section 2(5) of the Act.

7. Clement J. Trockel, Walter Conlon, Skip Neilson and Robert Lockhart, are, and have been at all times material herein, agents of Respondent acting on its behalf, and supervisors thereof within the meaning of Section 2(11) of the Act.

8. On or about February 13, 1973, and on various other dates presently unknown during the months of February, March and April, 1973, Respondent by Clement J. Trockel, its supervisor and agent, and by other agents and supervisors presently unknown, threatened its employees with discharge and other reprisals unless they signed cards designating Local 100 as their representative for collective bargaining and unless they joined Local 100.

9. On or about February 13, 1973 and on various dates presently unknown during the months of February, March and April, 1973, Respondent by Robert Lockhart, Clement J. Trockel, Skip Neilson, its supervisors and agents and by other supervisors and agents presently unknown urged and solicited its employees to sign cards designating Local 100 as their representative for collective bargaining purposes, and urged and solicited its employees to join Local 100.

10. (a) On or about June 24, 1973, Respondent discharged its employee Squicciarini.

(b) Since the date of the discharge of Squicciarini as described above in paragraph 10(a), Respondent has failed and refused to reinstate, or offer to reinstate, said employees to his former or substantially equivalent position of employment.

11. On or about April and May 1973, Respondent Company reduced the rate of pay of its employees Staats, Squicciarini, Werner Eckert, and other employees in the maintenance department and thereafter paid them their wages at such reduced rate.

12. Respondent discharged and thereafter failed and refused to reinstate its employee Squicciarini, as described above in paragraphs 10(a) and 10(b), and reduced the pay of its employees as described above in paragraph 11, because said employees joined and assisted Local 30, and Local 775, and refrained from joining or assisting Local 100 and because they engaged in other concerted activity for the purpose of collective bargaining and mutual aid and protection.

13. By the acts described above in paragraphs 8 through 12 and by each of said acts, Respondent interfered with, restrained and coerced and is interfering with, restraining and coercing its employees in the exercise of the rights guaranteed in Section 7 of the Act, and thereby engaged in, and is engaging in, unfair labor practices affecting commerce within the meaning of Section 8(a)(1) and Section 2(6) and (7) of the Act.

14. By the acts described above in paragraph 8 through 12 and by each of said acts, Respondent rendered, and is rendering, unlawful assistance and support to a labor organization, and contributed, and is contributing, financial and other support to a labor organization, and thereby engaged in, and is engaging in unfair labor practices affecting commerce within the meaning of Section 8(a)(2) and Section 2(6) and (7) of the Act.

15. By the acts described above in paragraphs 10 through 12 and by each of said acts, Respondent discriminated, and is discriminating, in regard to the hire and tenure and terms and conditions of employment of its employees, thereby encouraging membership in one labor organization, and discouraging membership in another labor organization, and thereby engaged in, and is engaging in, unfair labor practices affecting commerce within the meaning of Section 8(a)(3) and Section 2(6) and (7) of the Act.

16. The acts of Respondent described above in paragraphs 8 through 12 occurring in connection with the operations of Respondent described above in paragraphs 2 through 5 have a close, intimate, and substantial relation to trade, traffic, and commerce among the several States and tend to lead to labor disputes burdening and obstructing commerce and the free flow of commerce.

PLEASE TAKE NOTICE that on the 19th day of November, 1973, at 11:00 a.m. at 16 Court Street, Fourth Floor, in the Borough of Brooklyn, State of New York, a hearing will be conducted before a duly designated Administrative Law Judge of the National Labor Relations Board on the allegations set forth in the above Consolidated Complaint, at which time and place you will have the right to appear in person, or otherwise, and give testimony. Form NLRB-4668, Statement of Standard Procedures in formal hearings held before the National Labor Relations Board in unfair labor practices cases, is attached.

You are further notified that, pursuant to Sections 102.20 and 102.21 of the Board's Rules and Regulations, the Respondent shall file with the undersigned Regional Director, acting in this matter as agent of the National Labor Relations Board, an original and four (4) copies of an answer to the said Consolidated Complaint within ten (10) days from the service thereof, and that unless it does so all the allegations in the Consolidated Complaint shall be deemed to be admitted by it

to be true and may be so found by the Board. Immediately upon the filing of its answer, Respondent shall serve a copy thereof on each of the other parties.

Dated at Brooklyn, New York this 25th day of October, 1973.

Samuel M. Kaynard

Samuel M. Kaynard
Regional Director
National Labor Relations Board
Region 29
16 Court Street
Brooklyn, New York 11241

A 11

ANSWER

GE Co Ex # 1-G

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 29

COLONIE HILL LTD.

and

MAURO SQUICCIARINI — Case No. 29-CA-3457

and

JAMES STAATS — Case No. 29-CA-3462

and

LOCAL 100 SERVICE EMPLOYEES
INTERNATIONAL UNION, AFL-CIO

Party in Interest

ANSWER

Respondent, Colonie Hill Ltd., as and for its answer to the Consolidated Complaint herein, alleges as follows:

FIRST: Denies knowledge or information sufficient to form a belief as to that portion of paragraph 1(a) that alleges that the charge in Case No. 29-CA-3457 was filed by Squicciarini on June 26, 1973 and admits that copy of the charge was served by registered mail upon the respondent on or about June 28, 1973.

SECOND: Denies knowledge or information sufficient to form a belief as to so much as paragraph 1(b)that alleges that the charge in Case No. 29-CA-3462 was filed by Staats on July 3, 1973 and admits that a copy of the charge was served by registered mail upon respondent on or about July 3, 1973.

THIRD: Respondent admits the allegations stated and contained in paragraph 2, 3, and 4(a).

FOURTH: In answer to paragraph 4(b) respondent denies knowledge or information sufficient to form a belief as to allegation that the goods and materials valued in excess of $50,000 were transported to its facility in interstate commerce directly from states of the United States, other than the state in which it was located, and admits the remainder of the allegations of said paragraph 4(b).

FIFTH: Respondent denies the allegations of paragraph 5.

SIXTH: Respondent denies knowledge or information sufficient to form a belief as to each and every allegation stated and contained in paragraphs 6(a), 6(b) and 6(c).

SEVENTH: Respondent admits the allegations of paragraph 7.

EIGHTH: Respondent denies the allegations of paragraphs 8 and 9.

NINTH: Respondent admits the allegations of paragraphs 10(a), 10(b) and 11.

TENTH: Respondent denies the allegations of paragraphs 12, 13, 14, 15 and 16.

AS AND FOR A FIRST AFFIRMATIVE DEFENSE:

ELEVENTH: Squicciarini was discharged by the respondent because of the failure and refusal of said Squicciarini to perform work assigned to him and the

failure and refusal of Squicciarini to perform work assigned to him in a competent manner and not as a result of any membership in, or activities on behalf of any labor organization.

AS AND FOR A SECOND AFFIRMATIVE DEFENSE:

TWELFTH: That the rate of pay of Squicciarini, Staats and Eckert was reduced by the respondent as part of an overall economic condition resulting in the reduction of the rate of pay of not only Squicciarini, Staats and Eckert, but of other employees of respondent, and not because of any membership in, or activities on behalf of any labor organization.

WHEREFORE, respondent respectfully requests that the complaint herein be in all respects dismissed.

Dated: New York, N.Y.
November 8, 1973

Signed Herewith by Jan J. Hynes

HYNES & DIAMOND
Attorneys for Respondent
Colonie Hill Ltd.
Office & P.O. Address:
25 Broadway
New York, N.Y. 10004
(212) 422-9424

A 14

LETTER DATED NOVEMBER 6, 1973

Gen'l Coun. Ex. # 1-H.

November 6, 1973

Mr. Samuel M. Kaynard,
Regional Director
National Labor Relations Board
16 Court Street
Brooklyn, N.Y. 11241

Re: Colonie Hill Ltd.
Case No. 29-CA3457 and
Case No. 29-CA3462

Dear Mr. Kaynard:

The undersigned represents Colonie Hill Ltd and we have received notice of hearing in connection with the above matter for November 19, 1973. Please be advised that I will be actively engaged in the trial of another action in the Civil Court, New York County, on November 19, 1973, in the case of Otis Elevator against Colonie Hill, Part 12, Room 342 and accordingly, will not be able to proceed with the matter scheduled before the NLRB on that date. Due to other commitments immediately subsequent to November 19, 1973, it is requested that the hearing in this matter be rescheduled for December 18, 1973.

Very truly yours,

HYNES & DIAMOND

Francis P. Donelan

FPD/er
cc: Steven Fish, Esq.
Mr. Mario Squicciarini
Mr. James Staats
bc: Colonie Hill Ltd.

A 15

ORDER RESCHEDULING HEARING

Genl Counsel Ex. # 1-I

UNITED STATES OF AMERICA

BEFORE THE NATIONAL LABOR RELATIONS BOARD

COLONIE HILL LTD.	
and	
MAURO SQUILLACIARINI	Case No. 29-CA-3457
and	
JAMES SPANTS	Case No. 29-CA-3462
and	
LOCAL 100 SERVICE EMPLOYEES INTERNATIONAL UNION, AFL-CIO	
Party in Interest	

ORDER RESCHEDULING HEARING

Denied 1/28

IT IS HEREBY ORDERED that the hearing in the above-entitled matter be and the same hereby is re scheduled from November 19, 1973, to December 17, 1973, at 11:00 a.m., same place.

DATED at Brooklyn, New York, this 9th day of November, 1973.

Harold L. Richman

Acting Regional Director,
National Labor Relations Board

☆ U. S. GOVERNMENT PRINTING OFFICE: 1972—476-253

ADMINISTRATIVE LAW JUDGE'S DECISION AND ORDER

JD-119-74
Hauppauge, N.Y.

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
DIVISION OF JUDGES
WASHINGTON, D.C.

COLONIE HILL LTD.

and

MAURO SQUICCIARINI — Case No. 29-CA-3457

and

JAMES STAATS — Case No. 29-CA-3462

and

LOCAL 100 SERVICE EMPLOYEES
INTERNATIONAL UNION, AFL-CIO
Party in Interest

Steven Fish, Esq., for the
General Counsel.
Francis P. Donelan, Esq., of
Hynes & Diamond, New York,
N.Y., for Respondent.

DECISION

Statement of the Case

GEORGE J. BOTT, Administrative Law Judge: Upon charges of untair labor practices filed by the above-named individuals, 1/ the General Counsel of the National Labor Relations Board issued a consolidated complaint and notice of hearing on October 25, 1973, in which he alleged that Colonie Hill Ltd., herein Respondent or Company, had engaged in unfair labor practices in violation of Section 8(a)(1), (2) and (3) of the National Labor Relations Act, as amended, herein called the Act. Respondent filed an answer and a hearing was held before me in Brooklyn, New York, on December 17 and 18, 1973. General Counsel and Respondent were represented at the hearing, but Local 100 Service Employees International Union, AFL-CIO, the Party in Interest, herein called Local 100, although served with a copy of the complaint, did not appear. Subsequent to the hearing, General Counsel and Respondent filed briefs which have been considered.

1/ The charge in Case No. 29-CA-3457 was filed on June 26, 1973, and in Case No. 29-CA-3462 on July 3, 1973.

Upon the entire record in the case and from my observation of the witnesses, I make the following:

Findings of Fact

I. Respondent's Business

Respondent, a New York corporation, operates a motel, restaurant, golf course and catering hall in Hauppauge, Long Island. During the year prior to the issuance of the complaint, Respondent derived gross revenues from the operation of its business in excess of $500,000 and purchased and had delivered to its Hauppauge facility, food, liquor and other materials valued in excess of $50,000, of which goods valued in excess of $50,000 were transported to its facility in interstate commerce directly from states of the United States other than the State of New York.

Respondent is an employer engaged in commerce within the meaning of the Act.

II. The Labor Organizations Involved

Local 100 Service Employees International Union, AFL-CIO, herein called Local 100; Local 30, International Union of Operating Engineers, AFL-CIO, herein called Local 30; and Plumbers Local Union 775 of United Association of the Plumbing and Pipe Fitting Industry of the United States and Canada, AFL-CIO, herein called Local 775, are labor organizations within the meaning of the Act.

III. The Alleged Unfair Labor Practices

A. The Earlier Settlement Agreement and the Board Election which Followed it

Pursuant to charges of unfair labor practices filed on August 31, 1972, the General Counsel issued a complaint alleging that Respondent had violated Section 8(a)(1), (2) and (3) of the Act.

On November 2, 1972, an Informal Settlement was executed by Respondent, Local 100, and Local 164 Hotel and Restaurant and Bartenders International Union, AFL-CIO, 2/ in which Respondent agreed, inter alia, not to threaten employees with discharge if they refused to join Local 100; not to recognize Local 100 as bargaining representative until certified by the Board; and not to give any force or effect to a collective-bargaining contract with Local 100 executed on March 4, 1972. As is customary, the agreement further provided that nothing in it should require Respondent to vary or abandon any wage, hour, seniority, or other substantive feature which it had established for its employees in agreement with Local 100.

2/ Local 164 is not involved in this case.

Following the Settlement Agreement, a Consent Election Agreement was entered into providing for the holding of an election on December 14, 1972, among employees in a unit consisting of all full-time and regular part-time service and maintenance employees. 3/

On December 14, 1972, the election was held and Local 100, the only union on the ballot, won it by a very wide margin. On December 26, 1972, the Regional Director of the Board certified Local 100 as the statutory representative of employees in a unit of service and maintenance employees.

B. Acts of Assistance to Local 100 after the Settlement Agreement and before Certification

Mauro Squicciarini, a plumbing and maintenance employee who was allegedly discharged because of his Local 30 activities, signed an authorization card on December 4, 1972, in which he designated Local 30 (Operating Engineers) to represent him. He testified, without contradiction, that he had three essentially similar conversations with Personnel Director Trockel in which Trockel told him that he should sign up with Local 100 or be discharged. Squicciarini argued that Local 100 was not the proper union to represent the maintenance department but that Local 775 or Local 30 were. These conversations took place both before and after he signed his card in Local 775 and before the Board election.

Squicciarini also had a conversation with Walter Conlon before the election in which he said Conlon told him to get out of Local 30 and join Local 100 because he did not want more than one union in the Company. Squicciarini said that he also protested to Conlon that Local 100 was not the right union for maintenance employees, but that Conlon still urged him to get out of Local 30. He subsequently wrote to that union and asked to withdraw.

Conlon testified that he had no conversations with Squicciarini about unions but I do not credit his testimony. He also testified that he did work for Respondent in December 1972 but rather for the architect in charge of the project. Respondent's answer admits that Conlon is an agent of Respondent, and I find on that ground and also because of the nature of his functions which brought him into close contact with employees, as revealed in his testimony, that Respondent was responsible for his statements about unions. 4/

3/ On November 30, 1972, Local 775 (Plumbers) filed a petition to represent the Company's maintenance mechanics, and on December 5, 1972, Local 30 (Operating Engineers) filed a motion to intervene in the pending election proceeding, claiming to represent powerhouse and skilled maintenance employees. Later, Local 30 and Local 775 withdrew their actions.

4/ Conlon testified that he "indirectly" told employees what to do.

C. Respondent's Enforcement of the Union Security and the Checkoff Provisions of the Old Contract with Local 100 after Local 100's Certification and before the Execution of a New Contract

It is clear that after Local 100 won the Board election and was certified, Respondent, without entering into a new agreement with Local 100, required all unit employees to join Local 100. Squicciarini returned to work in January 1973 after a layoff for economic reasons. A week after his return, Personnel Director Trockel asked him to join Local 100, but he refused. Employee Staats was reinstated in March 1973, around the time that Werner Eckert was hired as a boiler room attendant. Shortly after his reinstatement, while he was picking up his paycheck at the office, Staats noticed that many employees were signing up with Local 100. Trockel told Staats that he also had to join, and when Staats asked if he had 30 days to do so, Trockel replied that he did not, because he had been employed earlier. Trockel also told Staats that he would be out of a job if he did not join Local 100. Staats walked away without joining Local 100 at that time, but he subsequently became a member. 5/ According to Eckert's uncontradicted testimony, supervisor Lockhart told him and Staats that they would lose their jobs unless they joined Local 100.

Peter Napolitano, Respondent's assistant personnel director and assistant comptroller, testified that the Company and Local 100 did not enter into a new contract after the certification until sometime in July 1973. He also testified, however, that the "substantive terms" of the initial contract, including union security and checkoff, were applied after the certification. He explained that he made the decision on this after discussing the matter with Russo, another assistant personnel director, and that they "assumed" that after Local 100 was certified that the old agreement could be enforced "in toto" until a new agreement was executed. He did not discuss the matter with Local 100, he said.

Conlon, who described his position with Respondent as "liason" between the "owners" and Respondent, which manages the project, testified that he met President O'Keefe of Local 100 in the office of Delillo, Respondent's president, in March 1973. He said that Delillo explained that since O'Keefe was Local 100's president, matters involving union representation should be discussed with him. Delillo also "indicated" "that there was an agreement in effect and had been in effect . . . and that until a new agreement was . . . hammered out . . . the agreement that was in effect prior would continue in effect and that there would be a continuity under that old agreement," according to Conlon. Neither Delillo nor O'Keefe testified. I agree with General Counsel's contention

5/ About a week or two later, Staats and Eckert were informed by supervisor Neilson that their salaries were being cut from $5.00 per hour to $4.10 per hour, because they had to join Local 100 and be paid according to Local 100's scale. The action of Respondent of cutting salaries is a separate issue in the case.

that Conlon's hearsay testimony is of no probative value on the question of the existence of an agreement to extend the old contract, but in any case, even if it were credited it would establish nothing more than an informal understanding between O'Keefe and Delillo, not binding on Respondent's employees in the circumstances of this case.

D. Squicciarini's Discharge

As found above, Squicciarini signed a union card for Local 30 on December 4, 1972, and resisted and argued against Trockel's and Conlon's efforts to convince him to join Local 100.

According to his credited testimony, when Squicciarini was reinstated after a layoff in February 1973, Napolitano promised him the job of supervisor to replace Dickerson who was retiring. Shortly after Squicciarini returned to work Trockel again asked him to join Local 100, but he refused, telling Trockel that he was a supervisor. Trockel indicated that he knew of no records to support that claim. About two weeks later, Squicciarini was told by supervisor Neilson that Lockhart was being placed in charge of the maintenance department. Squicciarini complained to Napolitano about this, but Napolitano advised him that his uncle (Delillo) had given Neilson complete authority to choose his own supervisor.

In April 1973, maintenance employees Staats and Eckert had their hourly rates reduced. Squicciarini testified, without contradiction, that Trockel told him about the cuts and attributed them to the fact that Staats and Eckert were against Local 100. He also told him, however, that Squicciarini's pay would not be reduced.

On May 6, 1973, however, Squicciarini's pay as well as the pay of the other employee (Cabanas) in the maintenance department was cut. When Squicciarini complained to Conlon about the reduction, he said he would check into the matter and get back to Squicciarini, but he never did.

According to the uncontradicted testimony of Squicciarini and Staats, President O'Keefe of Local 100 told him that Delillo had informed him that because he no longer needed maintenance mechanics or boiler room engineers, he intended to pay only the union scale for maintenance men and boiler room attendants. This was why their pay had been cut, O'Keefe explained, but he also advised them that they need not perform the more difficult and technical assignments they normally did since they were not being paid for it. The employees conveyed this information to supervisors Neilson and Lockhart, who told them that they would be fired immediately if they did not fully perform.

Squicciarini was on Naval Reserve duty from June 3 to June 20, and a week after his return to work, he was terminated. Lockhart told him the Company did not need him, and Neilson said the Company did not like his work.

Neilson and Lockhart did not testify. Assistant Personnel Director Napolitano testified that Neilson told him in April that Squicciarini was slowing down in his work. He said he watched Squicciarini closely and on one occasion saw him walking in the halls when he thought he should be elsewhere working. He also clearly indicated at another point in the record, however, that his opinion of Squicciarini's work was based on conversations with Neilson, Squicciarini's superior.

Joseph Cabanas worked in the maintenance department with Squicciarini. He does not have the latter's skills and probably can be accurately described as a plumber's or mechanic's helper. He testified that when Lockhart was made supervisor instead of Squicciarini, the latter resented it and began to work slowly. He expressed bitterness by stating that he "had had it" at Colonie Hill and intended to take home the special tools that he owned and used in his work. Cabanas said there was "harmony" before Lockhart was appointed, but that after that he had to carry the "brunt of the load." He was able to remember only two examples, he said, of slow work on Squicciarini's part. In one case, after inspecting a leaking pipe, Squicciarini left to get some tools and took too long to return. In another, Squicciarini took two or three days to complete a job which should have taken a day. Cabanas said he made no complaints to management about these incidents or about Squicciarini generally.

Squicciarini admitted that he was disappointed when Lockhart got the supervisor job after Napolitano had promised it to him, but he credibly testified that when Napolitano explained that Delillo had authorized Neilson to choose his own man, he spoke with Neilson, told him that he would work with Lockhart, and that thereafter there were no hard feelings. He also credibly testified, without contradiction, that no supervisor ever expressed dissatisfaction with his work or said he was slowing down, and he added that, in April and May, he was complimented by Lockhart, Neilson and Conlon about work he had performed. He also denied the substance and the implications of Cabanas' testimony about slowing down.

In my opinion, based on my observation of the witnesses and their testimony, Cabanas and Napolitano exaggerated Squicciarini's attitude toward his work and his performance after Lockhart was made supervisor. Moreover, Cabanas made no reports about Squicciarini to management and Napolitano admitted that his opinion of Squicciarini was based on conversations with Neilson and very little else. I find that Squicciarini's performance did not begin to deteriorate in March 1973, and that there was no justification for his termination on that ground.

E. Reducing the Pay of the Maintenance Department Employees

The complaint alleges that Respondent reduced the pay of maintenance department employees because they joined and assisted Local 30 and refrained from joining Local 100 and because they engaged in other concerted activity. It appears from the testimony that Respondent reduced the wages of all maintenance department employees in April 1973. Napolitano testified, without contradiction, that the Company first cut Supervisor Lockhart's salary from $360 to $300 per week and next reduced Eckert and Staats to an hourly rate of $4.10. Shortly thereafter, Squicciarini and Cabanas were cut to $4.10.

Napolitano testified that because Respondent's business was poor in March it decided to cut its overhead in areas such as maintenance and security, which did not generate income. As a result, the maintenance department employees had their wages reduced as indicated, and in April, May and June, Respondent laid off over 100 persons. Although many of the persons laid off were regular part-time waiters, Napolitano testified credibly that full-time employees, such as security personnel, clericals and a bartender, were also laid off. Only maintenance department personnel, however, received a cut in pay.

As indicated earlier, when Supervisors Neilson and Lockhart announced the cut to Staats and Eckert, they described it as being in conformity with Local 100's wage scale. Nothing was said about economy. Squicciarini was told by Personnel Director Trockel, as found above, that Staats' and Eckert's wages were lowered because they opposed Local 100, and he added that Squicciarini's pay would remain the same. When Squicciarini did receive a wage cut not long after, he sought out Conlon and complained about it, reminding Conlon that he had assured him that he would be taken care of if he joined Local 100. He testified that Conlon was "shocked" and promised to investigate, but he did not hear from him again on the subject. Conlon testified that he did investigate but discovered that Squicciarini's case was only a part of a larger financial problem.

F. Analysis and Conclusions

1. Threatening employees with discharge if they failed to join Local 100

The collective-bargaining contract dated March 4, 1972, between Respondent and Local 100 contained a clause requiring all employees to join the Union within designated periods, but after the contract was, by virtue of the settlement agreement dated November 2, 1972, disposing of unfair labor practice charges filed against Respondent, set aside and declared to be of no force and effect, Respondent and Local 100 did not execute a new agreement until July 1973. Nevertheless, during the period when there was no contract requiring membership in Local 100,

Respondent, by its agents Trockel and Lockhart, solicited employees to join Local 100 and threatened them with discharge if they did not. This conduct was exactly like the actions Respondent had advised its employees, in a notice to them posted pursuant to the settlement agreement, it would no longer engage in, and it also appears to have been in the same vein as other conduct occurring after the settlement agreement and before Local 100's certification. 6/ Respondent has, therefore, engaged in a continuous course of conduct in support of Local 100 to date.

Respondent contends that when it enforced the union-security provision of the March 4, 1972 agreement with Local 100 after it was certified but before a new contract was executed, it was merely doing what the settlement agreement and the law permits. Respondent's argument, in my opinion, is based on a misreading of the settlement agreement and a misunderstanding of the policies of the Act.

As Respondent points out, the settlement agreement not only required it not to give any force or effect to the March 4, 1972 contract, but also provided that nothing in it shall "require Respondent Colonie to vary or abandon any wage, hour, seniority, or other substantive feature which it has established for its employees in agreement with Respondent, Local 100, or to prejudice the assertion by its employees of any rights they may have derived as a result of said agreement." Relying on the quoted language from the settlement agreement and another provision by which it undertook to withdraw recognition from Local 100 as representative of its employees unless and until Local 100 shall have been certified by the Board, Respondent argues that all the terms of the initial labor agreement with Local 100 were only "non-operative" until Local 100 was certified. It concludes that when certification occurred, recognition and full enforcement of the contract could be reinstituted. The misreading of the settlement agreement is in the contention, in effect, that the union-security provision of the old contract was merely suspended or dormant prior to certification and was revived by the Board's certificate.

6/ Trockel threatened Squicciarini with discharge in November and December 1972 if he did not join Local 100. Conlon also told him before the December 14 election, on which Local 100's certification rests, to withdraw from Local 30 and join Local 100. These statements were, in all probability, all outside the Section 10(b) period and cannot, therefore, constitute unfair labor practices, but they have been considered for whatever light they shed on Respondent's conduct within the 10(b) period and on its motives.

The settlement agreement set aside the contract between Respondent and Local 100. The contract was a fruit of Respondent's unfair labor practices and the Board was empowered to invalidate it, but the rights of individual employees under the contract were not affected by the Board's action. 7/ The language in the settlement agreement which provides that Respondent shall not be required to abandon wages or other substantive terms of employment established for its employees pursuant to the contract is for the benefit and protection of the employees, not Respondent. It can hardly be contended that forcing all employees to join Local 100 in the absence of a valid union-security agreement is an action for their benefit or protection. 8/ To the contrary, to permit Respondent and Local 100 to continue to enforce such a provision after Local 100's certification when it had been declared to be of no force and effect and a new agreement has not been signed would be to condone a continuation of the very unfair labor practices which the settlement agreement was designed to cure and to deny employees their right not to join Local 100 until 30 days after a valid new union-security agreement had been signed and they had been told of it.

Admittedly, after certification of Local 100, no new agreement was executed until July 1973. I have also found no probative evidence to support the suggestion that Local 100's president and Respondent's president met after the certification and agreed to continue operating under the old contract, but even if they had, I conclude that important employee rights should not hang precariously on the legal significance of a private meeting in which nothing was reduced to writing, particularly where an earlier agreement had been set aside and the employees so notified and further advised that they could not be threatened with discharge if they failed to join Local 100. 9/ In such circumstances, employees are entitled to remain free of union restraints until a new agreement is signed and they are made aware of their obligations under it. 10/

7/ See National Licorice Co. v. N.L.R.B., 309 U.S. 350, 365.

8/ See International Association of Bridge, Structural and Reinforced Iron Workers Union, Local 378 (Judson Steel Corporation), 192 NLRB 1069, 1075.

9/ Employee Staats was not even given the statutory 30 days to join Local 100, which is evidence that, after the certification, Respondent acted as if the rights and obligations of all parties had automatically reverted to what they were before the settlement agreement.

10/ See Judson Steel Corporation, supra, at 1075; Rocket and Guided Missile Lodge 946, International Association of Machinists and Aerospace Workers, AFL-CIO (Aerojet-General Corporation), 186 NLRB 561, 562.

I find and conclude, on the basis of the facts set forth above, that Respondent, by requiring employees to join Local 100 and threatening them with discharge if they did not, at a time when no valid collective bargaining contract requiring union membership was in existence, lent substantial support and assistance to Local 100 and interfered with, restrained and coerced employees, all in violation of Section 8(a)(1) and (2) of the Act.

2. Squicciarini's Discharge

As far as the record in this case discloses, it was only the maintenance department employees who opposed the assistance which Respondent gave to Local 100 in order to have only one union represent its employees. It was the maintenance department which had a Petition and a Motion to Intervene filed by Local 775 and Local 30 to represent them, and it was Squicciarini, an older and more experienced employee in the maintenance department, who resisted company officials's attempts to have him join Local 100, arguing that maintenance department employees would be better represented by Local 30 or Local 775.

After Local 100 won the Board election and was certified in December 1972. Respondent could have reasonably believed that the problem of dissent in the maintenance department was solved and that one union would represent its employees. But when Squicciarini and Staats, another maintenance department employee, were called back to work in early 1973, both refused to join Local 100 when Personnel Director Trockel asked them to.

Shortly after Staats refused to join Local 100, his and newly hired maintenance employee Eckert's hourly rates were reduced, an action which I find not to have been based upon economic considerations, and not long thereafter Squicciarini and the fourth rank-and-file employee in the department had their pay cut.

Squicciarini complained about his pay cut to Conlon to Local 100's president O'Keefe in late May 1973. O'Keefe told Squicciarini and Staats that Delillo, Respondent's president, had informed him that he had cut their rates because he no longer needed skilled mechanics, and he suggested that in that case they should refuse to perform skilled maintenance tasks when asked. When Squicciarini told Supervisors Neilson and Lockhart about O'Keefe's suggestion, they told him he would be fired on the spot if he complied with it. 11/

11/ As noted earlier, Delillo, Neilson and Lockhart did not testify.

Shortly after the above conversations, Squicciarini left for two weeks of Naval Reserve duty, and a week after his return he was terminated.

These facts, as summarized and as set forth in greater detail earlier, establish a strong prima facie case that Squicciarini was terminated illegally because he was a troublesome threat to Local 100's continued representation of the maintenance department. On the other hand, I have found Respondent's explanation for Squicciarini's termination incredible. Since Respondent has not overcome the plain inference that it was discriminatorily motivated in discharging Squicciarini, I conclude that it violated Section 8(a)(1), (2) and (3) of the Act by discharging him.

3. Reducing the pay of maintenance department employees

Although economic conditions forced Respondent to lay off over 100 employees during April, May and June 1973, Respondent's defense that these same economic conditions caused the salary cuts in the maintenance department is not convincing on its own, because it appears that only the salaries in the maintenance department were cut, and the Company rehired Staats and hired Eckert in the maintenance department shortly before it cut their wages. In addition, not only does the defense appear questionable in the light of other record facts, but it is contradicted by other evidence.

As in the case of Squicciarini's discharge, the timing of the cuts is significant. Staats and Eckert were notified of theirs not long after Staats refused to join Local 100. Respondent also gave conflicting reasons for the reductions. Its defense at the hearing was economic, but Delillo told O'Keefe that the cuts were instituted because Respondent no longer needed skilled mechanics. Finally, Squicciarini testified, without contradiction, that Personnel Director Trockel told him that Staats's and Eckert's salaries were reduced because they were against Local 100.

I find and conclude, on the basis of the above considerations, that Respondent's action in regard to maintenance department salaries was not motivated by economic considerations but was a reprisal because of the maintenance department employees' opposition to Local 100 and their leanings toward another labor organization. By such conduct, Respondent violated Section 8(a)(1), (2) and (3) of the Act.

IV. The Remedy

It will be recommended that the Respondent be ordered to cease and desist from engaging in the unfair labor practices found herein and take certain affirmative action, as provided in the recommended Order below, designed to effectuate the policies of the Act.

It having been found that Respondent discriminatorily discharged Mauro Squicciarini, it will be recommended that Respondent be ordered to offer him immediate and full reinstatement to his former job, or, if his job no longer exists, to a substantially equivalent position without prejudice to his seniority or other rights and privileges. It will be further recommended that Respondent be ordered to reimburse him for any loss of pay he may have suffered as a result of his discriminatory discharge in the manner set forth in F.W. Woolworth Company, 90 NLRB 289, 291-293, together with 6 percent interest thereon in accordance with Isis Plumbing & Heating Co., 138 NLRB 716.

Having found that Respondent illegally reduced the rates of pay of its employees Staats, Squicciarini, Eckert and other employees in the maintenance department, I shall also recommend that said employees be made whole for losses suffered with interest thereon.

It has also been found that Respondent unlawfully assisted Local 100 by requiring employees to join said Union when there was no legal agreement in effect requiring it, and by discharging Squicciarini and reducing his pay and the pay of other employees in the maintenance department. The normal remedy for such assistance would be another Order requiring the withdrawal of recognition from Local 100 until certified and nullifying any agreement it obtained as a result of the unfair labor practices. Local 100 has been certified by the Board, however, after winning an election in the appropriate unit by an overwhelming majority of those voting. Although it was assisted by Respondent after the election, as I have found, it was a certified majority representative of employees when it executed its July 1973 agreement. I see no practical goal to be attained by having Local 100 tested in another election or by setting aside the July 1973 agreement. Since, however, Respondent, enforced the March 1972 labor contract after it had been set aside and required employees to join and pay dues to Local 100 when no valid agreement requiring it existed, a practical, fair and sufficient remedy for such conduct, it seems to me, would be to have Respondent reimburse employees for any dues, initiation fees or other monies they paid Local 100 from November 2, 1972, the date of the execution of the settlement agreement, to a date 30 days after the effective date of the July 1973 contract or the beginning of their employment, whichever is later, 12/ with interest, and I shall so recommend.

12/ In accordance with the first proviso to Section 8(a)(3) of the Act.

Upon the basis of the foregoing findings of fact and upon the entire record in the case, I make the following:

Conclusions of Law

1. Respondent is an employer engaged in commerce within the meaning of the Act.

2. Local 100, Local 775 and Local 30 are labor organizations within the meaning of the Act.

3. By threatening employees with discharge unless they joined Local 100, Respondent violated Section 8(a)(1) and (2) of the Act.

4. By discharging and refusing to reinstate Mauro Squicciarini, Respondent violated Section 8(a)(1), (2) and (3) of the Act.

5. By reducing the pay of Staats, Eckert, Squicciarini and other employees in the maintenance department, Respondent violated Section 8(a)(1), (2) and (3) of the Act.

6. The aforesaid unfair labor practices are unfair labor practices within the meaning of Section 2(6) and (7) of the Act.

Upon the foregoing findings of fact, conclusions of law, and the entire record, and pursuant to Section 10(c) of the Act, I hereby issue the following recommended: 13/

ORDER

Respondent, its officers, agents, successors and assigns, shall:

1. Cease and desist from:

(a) Contributing support and assistance to Local 100 or any other labor organization of its employees.

(b) Discharging employees or otherwise discriminating against them because of their union activities.

(c) Reducing the pay of employees because they oppose Local 100 or desire another labor organization to represent them.

13/ In the event no exceptions are filed as provided by Section 102.46 of the Rules and Regulations of the National Labor Relations Board, the findings, conclusions, and recommended Order herein shall, as provided in Section 102.48 of the Rules and Regulations, be adopted by the Board and become its findings, conclusions, and Order, and all objections thereto shall be deemed waived for all purposes.

(d) In any other manner interfering with, restraining or coercing its employees in their exercise of the rights guaranteed in Section 7 of the Act except to the extent that such rights may be affected by an agreement requiring membership in a labor organization as a condition of employment as authorized in Section 8(a)(3) of the Act.

2. Take the following action necessary to effectuate the policies of the Act:

(a) Make whole Mauro Squicciarini for any loss of pay he may have suffered as the result of his discharge, in the manner set forth above in the section entitled "The Remedy."

(b) Make whole Squicciarini, Staats, Eckert and other employees in the maintenance department for wages lost by reason of the reduction in their pay, as set forth in the section entitled "The Remedy."

(c) Reimburse all present and former employees for any dues, initiation fees, or other monies they paid Local 100 while Respondent was enforcing the terms of the March 4, 1972 labor agreement with Local 100, in the manner set forth in the section entitled "The Remedy."

(d) Preserve and, upon request, make available to the Board or its agents, for examination and copying, all payroll records, social security payment records, timecards, personnel records and reports, and all other records necessary to analyze the amount of backpay or other monies due under the terms of this Order.

(e) Post at its Hauppauge, New York facility, copies of the attached notice marked "Appendix." 14/ Copies of said notice, on forms provided by the Regional Director for Region 29, shall, after being duly signed by Respondent, be posted immediately upon receipt thereof in conspicuous places, including all places where notices to employees are customarily posted, and be maintained by it for 60 consecutive days. Reasonable steps shall be taken to insure that said notices are not altered, defaced or covered by any other material. 15/

14/ In the event the Board's Order is enforced by a Judgment of the United States Court of Appeals, the words in the notice reading "POSTED BY ORDER OF THE NATIONAL LABOR RELATIONS BOARD" shall be changed to read "POSTED PURSUANT TO A JUDGMENT OF THE UNITED STATES COURT OF APPEALS ENFORCING AN ORDER OF THE NATIONAL LABOR RELATIONS BOARD."

15/ Consistent with my recommendation not to order Respondent to withdraw recognition from Local 100 and to cease giving effect to its July 1973 contract, the notice has been tailored so as not to confuse the employees who read it. Thus, since the existing contract contains a union-security clause, the notice does not assure employees that Respondent will not threaten them with discharge if they do not join Local 100. Similarly, assistance to Local 100 is not abjured, because the existing contract itself is a form of assistance, and to attempt to make a distinction between legal and illegal assistance would add more confusion.

(f) Notify said Regional Director, in writing, within 20 days from the date of this Order, what steps Respondent has taken to comply herewith.

Dated at Washington, D. C. FEB 25 1974

George J. Bott
Administrative Law Judge

FORM NLRB-4727
(9-69)

APPENDIX JD-119-74

NOTICE TO EMPLOYEES

POSTED BY ORDER OF THE NATIONAL LABOR RELATIONS BOARD

AN AGENCY OF THE UNITED STATES GOVERNMENT

WE WILL NOT discharge employees or otherwise discriminate against them because of their union or other concerted activities.

WE WILL NOT reduce employees' pay because they engage in union or other concerted activities, or because they oppose and want a union other than LOCAL 100 SERVICE EMPLOYEES INTERNATIONAL UNION, AFL-CIO, to represent them.

WE WILL NOT in any other manner interfere with, restrain or coerce employees in the exercise of their rights guaranteed in Section 7 of the National Labor Relations Act, as amended, except to the extent that such rights may be affected by an agreement requiring membership in a labor organization as a condition of employment as authorized in Section 8(a)(3) of the Act.

WE WILL offer MAURO SQUICCIARINI immediate and full reinstatement to his former position, or if it is not available, to a substantially equivalent position, without prejudice to seniority and other rights and privileges and make him whole for any loss of pay suffered as a result of the discrimination against him.

WE WILL make whole SQUICCIARINI, STAATS, ECKERT and other maintenance department employees for the wages they lost when we reduced their wages in April 1973.

WE WILL reimburse all present and former employees for any dues, initiation fees, or other monies they were required to pay to LOCAL 100 from November 2, 1972 to August 1973, which was the period during which we were not permitted to enforce the union-security provision of the March 4, 1972 contract we had with LOCAL 100 because it had been set aside under the terms of a settlement agreement with the National Labor Relations Board.

COLONIE HILL LTD.
(Employer)

Dated _____ By _____
(Representative) (Title)

THIS IS AN OFFICIAL NOTICE AND MUST NOT BE DEFACED BY ANYONE

This notice must remain posted for 60 consecutive days from the date of posting and must not be altered, defaced, or covered by any other material. Any questions concerning this notice or compliance with its provisions may be directed to the Board's Office, 16 Court Street, 4th Floor, Brooklyn, New York 11241 (Tel. No. 212 - 596-3750).

GENERAL COUNSEL'S EXCEPTIONS AND ARGUMENT IN SUPPORT OF DECISION AND ORDER OF ADMINISTRATIVE LAW JUDGE

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION

COLONIE HILL LTD.

and

MAURO SQUICCIARINI

and

JAMES STAATS

and

LOCAL 100 SERVICE EMPLOYEES INTERNATIONAL UNION, AFL-CIO

Party in Interest

Case No. 29-CA-3457

Case No. 29-CA-3462

GENERAL COUNSEL'S EXCEPTIONS AND ARGUMENT IN SUPPORT THEREOF TO DECISION AND ORDER OF ADMINISTRATIVE LAW JUDGE

Steven Fish
Counsel for the General Counsel
National Labor Relations Board
Region 29
16 Court Street
Brooklyn, New York 11241

General Counsel's Exceptions and Argument in Support of Decision and Order of Administrative Law Judge

STATEMENT OF THE CASE 1/

Pursuant to charges filed in Case No. 29-CA-3457 by Mauro Squicciarini, herein called Squicciarini, and in Case No. 29-CA-3462 by James Staats, herein called Staats, on October 25, 1973, the General Counsel issued a Consolidated Complaint alleging that Colonie Hill Ltd., herein called Respondent violated Sections 8(a)(1), (2) and (3) of the Act.

On December 17 and 18, 1973 a hearing was conducted on the above Complaint before Administrative Law Judge George J. Bott. On February 25, 1974 Judge Bott issued his Decision in which he concluded that Respondent violated Sections 8(a)(1), (2) and (3) of the Act as alleged in the Complaint.

Counsel for the General Counsel respectfully urges the Board to adopt the factual findings and conclusions of law of the Judge as they are substantiated by a preponderance of the evidence. Counsel for General Counsel also urges that the Board adopt those portions of the Recommended Order of Judge Bott to which no exceptions are taken as these Recommendations will effectuate the purposes of the Act.

However Counsel for General Counsel takes the following exceptions to Judge Bott's Recommended Remedial Order and respectfully urges that the Board sustain said exceptions and modify the Judges Order as outlined below.

(1) The Judge erred by failing to Order the pay reduced from the salary of the employees of the maintenance department to be restored. (JD. 12, L. 18-21; JD. 14, L. 20-25)

(2) The Judge erred by failing to Order as part of the remedy for the reinstatement of Squicciarini that the pay reduced from his salary be restored. (JD. 12, L. 8-17; JD. 14, L. 10-12)

1/ References herein are designated as follows: The Judges Decision is designated JD; and L. to the lines referred.

(3) The Judge erred by failing to Order Respondent to Cease and Desist from threatening employees with discharge unless they joined Local 100. (JD. 13, L. 35-41; JD. 14, L. 1-5)

(4) The Judge erred by failing to include in the Notice To Employees prohibitions against Respondent threatening employees with discharge unless they join Local 100 or against Respondent assisting Local 100. (JD. 14, L. 45-55)

SUPPORTING ARGUMENT

Judge Bott correctly found that Respondent violated Sections 8(a)(1), (2) and (3) of the Act by reducing the pay of employees Squicciarini, Staats, Eckert and other employees in the maintenance department. 2/ (JD. 11, L. 39-44; JD. 13, L. 17-19)

The Judge ordered that the employees whose pay was reduced be made whole for wages lost by reason of said reduction, (JD. 12, L. 19-22; JD. 14, L. 14-17), but he failed to order that the pay cuts of these employees be rescinded and their salaries be restored to the pre discriminatory levels. It is clear that the employees will not be made whole due to the discriminatory pay reduction unless their pay is restored. Thus the Board should Order Respondent to restore the pay of the employees discriminated against by the reduction in pay to their pay rate prior to the discrimination plus any raises that may have been granted to employees since said discrimination.

Similarly although the Judge found Squicciarini to have been discriminatorily discharged (JD. 13, L. 15-16), and ordered reinstatement and back pay for him, 3/ (JD. 12, L. 8-17; JD. 14, L. 10-12), he failed

2/ Judge Bott found that the other non supervisory employee in the maintenance department at the time of the pay cut was Joseph Cabanas. (JD. 7, L. 5-13)

3/ Although Judge Bott in his Remedy Section ordered Respondent to reinstate Squicciarini (JD. 12, L. 12-14), he inadvertently failed to include a reinstatement provision in his Recommended Order. (JD. 14, L. 10-40) This oversight should be corrected by the Board's Order.

to specify that Squicciarini's pay reduction should be rescinded and his pay restored to the pre discrimination level. Thus the Order with respect to Squicciarini should specify that he will be reinstated at his salary prior to the pay cut plus any raises that employees in the department have received.

Judge Bott found in his Conclusions of Law that Respondent violated Sections 8(a)(1) and (2) of the Act by threatening employees with discharge unless they joined Local 100. (JD. 13, L. 13-14) However he failed to include in his Recommended Order that Respondent should Cease and Desist from engaging in said conduct. Although no explanation for this omission is given in the Decision, Judge Bott did explain why he did not include such a provision in the Notice. It is assumed that his failure to include it in the Recommended Order was done for similar reasons.

Judge Bott explained that since Local 100 has been certified to represent Respondent's employees and they have signed a contract in July 1973, containing a valid Union Security Clause, he would not order Respondent not to threaten employees with discharge unless then join Local 100. (JD. 14, L. 45-51)

It is submitted that despite the existence of a valid Union Security Clause, there can be many situations where a threat to discharge an employee unless he joins a Union can be violative of the Act, and such conduct should be proscribed. Although some confusion might result from such an order in the Notice, this can be alleviated by the insertion of the 8(a)(3) proviso included in such situations, and already included in the Recommended Order. (JD. 14, L. 1-5)

Similarly there are numerous types of assistance to a Union other than the signing of a contract, and it is submitted that a prohibition in the Notice against unlawful assistance to Local 100 will

not significantly confuse employees, and is necessary in order to effectuate the purposes of the Act.

CONCLUSION

Accordingly it is urged that the Decision, Findings and Order of the Administrative Law Judge with the modifications suggested by the above submitted exceptions, should be adopted by the Board, and an appropriate Board Order be issued consistent with said exceptions.

Dated at Brooklyn, New York this 5th day of April, 1974.

Respectfully submitted,

Steven Fish
Counsel for the General Counsel
National Labor Relations Board
Region 29
16 Court Street
Brooklyn, New York 11241

To: John C. Truesdale
Executive Secretary
National Labor Relations Board
Washington, D.C. 20570

Administrative Law Judge George Bott
Division of Judges - National Labor Relations Board
Washington, D.C 20570

Hynes & Diamond, Esqs.
25 Broadway
New York, New York
Attn: Francis Donelan, Esq.

Mauro Squicciarini
8 Gaynor Avenue
Nesconset, New York 11767

James Staats
2944 Lakebrooke Circle
Lansdowne, Maryland 21227
Apt. 304

Local 100 Service Employees
Int'l Union, AFL-CIO
549 Broadway
Massapequa, New York

William Pitassy
549 Broadway
Massapequa, New York

EMPLOYER'S CROSS-EXCEPTIONS AND ARGUMENT IN OPPOSITION TO DECISION AND ORDER OF ADMINISTRATIVE LAW JUDGE

250-155-H
DCN

UNITED STATES OF AMERICA

BEFORE THE NATIONAL LABOR RELATIONS BOARD

REGION

COLONIE HILL LTD.

and

MAURO SQUICCIARINI — Case No. 29-CA-3457

and

JAMES STAATS — Case No. 29-CA-3462

and

LOCAL 100 SERVICE EMPLOYEES INTERNATIONAL UNION, AFL - CIO

Party in Interest

CROSS-EXCEPTIONS OF COLONIE HILL LTD. AND ARGUMENT THEREOF IN OPPOSITION TO DECISION AND ORDER OF ADMINISTRATIVE LAW JUDGE

HYNES & I[illegible]
Attorneys [illegible]r
Colonie Hill Ltd.
25 Broadway
New York, N. Y. 10004

A 38

Employer's Cross-Exceptions and Argument in Opposition to Decision and Order of Administrative Law Judge

STATEMENT OF THE CASE[1]

The General Counsel issued a consolidated Complaint, allegedly based on charges filed by Mauro Squicciarini and James Staats, alleging that Colonie Hill, Ltd., hereinafter referred to as Respondent, violated Sections 8(a) (1) (2), and (3) of the Act.

Hearings were held on December 17th and 18th, 1973 before Administrative Law Judge George J. Bott and on February 25, 1974 Administrative Law Judge Bott issued his decision in which he found the Respondent violated Sections 8(a) (1), (2) and (3) of the Act.

It is respectfully submitted that the Board should reject and set aside the findings of fact, recommendations and conclusions of law of the Administrative Law Judge hereinafter specifically referred to, inasmuch as said findings of fact are manifestly against the weight of the evidence adduced at the hearing, and that said conclusions of law are legally insufficient and without any factual basis in connection with the evidence adduced at the hearings; and further, that the recommendations of the Administrative Law Judge based upon said improper findings of fact and insufficient conclusions of law are equally improper and in some instances grossly in excess of the relief sought in the Consolidated Complaint.

Strong exception is taken to the following findings, conclusions and recommendations and it is respectfully sub-

* 1 - References herein are designated as follows:
The Judge's decision is designated JD;
The number following JD refers to the page, and
L. to the lines to which reference is made.

mitted and urged that the Board sustain said exceptions and set aside the Administrative Law Judge's Order as outlined below.

1. There is no evidence or testimony whatsoever that Squicciarini signed a card in Local 775, either before or after the Board election (JD 3, L. 25-27).

2. Conlon's clear and uncontroverted testimony is that he was not an employee of the Respondent in December of 1972. However, there is no question that he was an employee of the Respondent when Respondent served its answer in November of 1973. Conlon testified that his job with the architect in December of 1972 did bring him in close contact with all employees at the job site. But, there is no evidence whatsoever that the architect or its employee, Conlon, was an agent of the Respondent for any purposes in December of 1972. Thus, the Administrative Law Judge's conclusion (JD 3, L. 44) that "Respondent was responsible for his statement about unions." is not only arbitrary and gratuitous, but is without any basis in law or fact whatsoever. Moreover, Conlon has denied that he ever made such statements about unions. Moreover, it is submitted that the Administrative Law Judge's statement (JD 3, L. 38-39), that Conlon testified "that he did work for Respondent in December 1972 . . ." is wholly erroneous, and perhaps a typeographical error, for Conlon's testimony was exactly to the contrary.

3. Very strong and vehement exception is taken to the Administrative Law Judge's findings and conclusions

with respect to the effect which the Settlement Agreement of November, 1972 (General Counsel's Ex. #9) had upon the contractual relationship between the Respondent and Local 100 both prior to the Settlement Agreement as well as after the election and certification of Local 100 in December of 1972. Ignoring completely the fundamental concepts in the law of contracts in respect of the parties intent to be bound by a course of conduct or even, indeed, by silence, he concluded that the "settlement agreement set aside the contract between respondent and Local 100." (JD 9, L. 1 and 2). However, the Administrative Law Judge went further and not only exceeded the bounds and limitations of his own office but ignored the fundamental precept that his decision must be confined to the evidence in the record before him. Thus, he stated (JD 9, L. 3-5, and L. 12-17) . . . "the contract was a fruit of repondent's unfair labor practices . . . [To] permit respondent and Local 100 to continue to enforce such a provision after Local 100's certification when it had been declared to be of no force and effect and a new agreement has not been signed would be to condone a continuation of the very unfair labor practices which the settlement agreement was designed to cure . . ."

Such statements by the Administrative Law Judge are grossly inappropriate and are not based on any evidence, documentary or otherwise, or testimony in the entire record of this matter. The Administrative Law Judge had before him the Settlement Agreement entered into by respondent and Local 100 in November of 1972. That document speaks of

allegations only, and allegations made by all parties against all other parties. Allegations do not make unfair labor practices. For the Administrative Law Judge to characterize the contract between Respondent and Local 100, as "a fruit of respondent's unfair labor practices", goes beyond the evidence in the record of this matter and borders on misconduct and is certainly reversible error.

Moreover, there is no evidence whatsoever for testimony of the parties to the Settlement Agreement concerning what, if any, are "the very unfair labor practices which the settlement agreement was designed to cure . . ." (JD 16 and 17).

Impressions or concepts in the mind of the Administrative Law Judge as to what "unfair labor practices" the Settlement Agreement was designed to cure, are totally conjecture and personal opinions, and are not based on any evidence or testimony in the entire record. The fact that the Respondent and Local 100 did not, following the election and the Board's certification of Local 100, reduce any "agreement", to writing, is totally without significance. The Administrative Law Judge cannot rewrite the parties' Settlement Agreement nor can he rewrite the prior contract of March 4, 1972. Nor can he require a new written agreement to be executed where none of the exhibits or testimony contained such a requirement; and especially he cannot do so where the law of contracts does not require such written agreement. The Administrative Law Judge's ruling that the Settlement Agreement set aside the prior contract between

Respondent and Local 100 is totally and wholly erroneous, and should be set aside by the Board.

4. Conlon testified that he first became employed by the respondent in or about March of 1973. He further testified that in March of 1973, he met President O'Keefe of Local 100 in the office of DeLillo and that DeLillo told Conlon, in the presence of O'Keefe, that "there was an agreement in effect and had been in effect . . . and that until a new agreement was . . . hammered out . . . the agreement that was in effect prior would continue in effect and that there would be a continuity under that old agreement," (JD 4, L. 43-46). The Administrative Law Judge then goes on to say (JD 4, L. 46- JD 5, L. 1-5), "I agree with the general counsel's contention that Conlon's hearsay testimony is of no probative value on the question of an existence of an agreement to extend the old contract, but in any case, even if it were credited, it would establish nothing more than in informal understanding between O'Keefe and DeLillo, not binding on respondent's employees in the circumstances of this case." Such a statement by the Administrative Law Judge completely overlooks the very fundamental fact that the Respondent's employees referred to had just overwhelmingly voted to have Local 100, and presumably, its President, Mr. O'Keefe, be their bargaining representative, with Respondent.

However, even if the Administrative Law Judge attributes "no probative value" to Conlon's "hearsay" testimony, he apparently attributes great probative value to the double hearsay testimony of Squicciarini and Staats, that "President

O'Keefe of Local 100 told him that DeLillo had informed him that because he no longer needed maintenance mechanics or boiler room engineers, he intended to pay only the union scale for maintenance men and boiler room attendants . . ." (JD 5, L. 39-42). While it is recognized that the Administrative Law Judge may receive hearsay testimony and accord to it whatever weight he determines, it is submitted that some guidelines concerning reasonableness must be required, and that in the instant illustration such guidelines have been exceeded.

5. Sections E (Reducing the Pay of the Maintenance Department Employees) and F (Analysis and Conclusions, 1. Threatening Employees With Discharge if They Failed to Join Local 100) are further examples where the Administration Law Judge proceeds upon the legally invalid assumption, as heretofore shown, that after certification of Local 100 in December of 1972, there was no contract, nor indeed, any substitive contractual understanding between the respondent and Local 100. Respondent has contended from the outset, and properly so, that by informing its employees, including maintenance men and maintenance mechanics, that they must join Local 100 or face discharge, Respondent was merely enforcing the union security provision in the March 4, 1972 agreement with Local 100. It is conceded to be sure, that such conversations could conceivably be construed as "threats", rather than merely advising employees of the facts of life after certification occurred. However, it is submitted that the entire record in these proceedings is bare of any evidence whatsoever that the statements allegedly made by Trockel or Conlon or anyone else in a supervisory

capacity to Squicciarini or Staats or Eckert was made in the context of "a threat" rather than a mere disclosure to employees of the existence of the union security provision and the full purport of that provision. Thus, for the Administrative Law Judge to find that Respondent "solicited employees to join Local 100 and threatened them with discharge if they did not." (JD 8, L. 1-2), is a gratuitous and tortured interpretation which is wholly unwarranted by any of the evidence in the record.

6. Strong exception is taken to the Administrative Law Judge's finding (JD 8, L-32-35) that "the misreading of the settlement agreement is in the contention, in effect, that the union-security provision of the old contract was merely suspended or dormant prior to certification and was revived by the Board's certifica te." There has been no misreading of the Settlement Agreement by anyone except the Administrative Law Judge in his concluding, erroneously, that the Settlement Agreement wholly and completely set aside, indeed, extinguished, the old contract of March 4, 1972. Moreover, there is no contention by Respondent or anyone else, that the old contract was revived solely by the Board's certifying Local 100. What revived the old contract of March 4, 1972, was the actions and course of conduct of the parties <u>after certification</u>, in full recognition of, and reliance upon, the provisions contained in the Settlement Agreement concerning such possible certification. And the course of conduct clearly demonstrated that both parties intended to restore the provisions of the old contract until a

new contract was to be negotiated in the Spring or Summer of 1973.

Thus, the Administrative Law Judge's findings and conclusions set forth at the top of Page 10 (JD 10, L. 1-7) that "no valid collective bargaining contract requiring union membership was in existence . . .", and that such fact "lent substantial support and assistance to Local 100 and interfered with, restrained, and coerced employees, all in violation of Section 8(a), (1) (2) of the Act." are erroneous and should be set aside.

7. The Administrative Law Judge's findings, in connection with the discharge of Squicciarini, that Squicciarini, Staats, and Eckert, all refused to join Local 100, are wholly erroneous and totally without factual basis anywhere in the record. Squicciarini's testimony was simply that he felt that Local 30 or Local 775 could better represent the maintenance department. Staat's testimony was that when it was explained to him that he would have to join Local 100, he simply walked away. There is not one word of testimony in the record by either Staats, Squicciarini or Eckert, that they stated to anyone of Respondent's employees or agents that they refused to join Local 100. Indeed, the testimony of both Squicciarini and Staats is that they later attended union meetings with Local 100's President, Mr. O'Keefe. Such conduct would hardly indicate a refusal to join Local 100. Moreover, both Squicciarini and Staats testified that at one of these meetings, O'Keefe suggested that the Respondent had cut their pay rates because Respondent no longer needed skilled mechanics, and

O'Keefe suggested that in that case, they should refuse to perform skilled maintenance tasks when asked. When Squicciarini told supervisors Neilson and Lockhart about O'Keefe's suggestion, they told him he would be fired on the spot if he complied with it (JD 10, L. 39-44). It is submitted that Respondent's supervisors Neilson and Lockhart acted quite properly in informing Squicciarini that he would be dismissed if he followed O'Keefe's suggestion. Moreover, it is further submitted that if this suggestion was made by O'Keefe, and the Administrative Law Judge did find Squicciarini's testimony on this matter to be credible, then in spite of the warning of supervisors Neilson and Lockhart to Squicciarini concerning O'Keefe's suggestion, the seed was, nevertheless, planted in Squicciarini's mind, and that the slowdown in his work performance, testified to by Cabanas, Napolitano and Conlon, was no more and no less the carrying out by Squicciarini of the suggestion of O'Keefe. Thus, while a fair reading of the evidence supports the Respondent's contention that Squiciarini, in effect, slowed down on the job, the testimony is clear that he definitely slowed down on the job after the appointment of Lockhart as his supervisor. Thus, the discharge of Squicciarini was clearly for cause. The Administrative Law Judge's ruling (JD 11, L. 7-8) that Squicciarini was terminated illegally because he was a troublesome threat to Local 100's continued representation of the maintenance department", is totally unwarranted and without any evidenciary support in the record, and particularly so in view of Squicciarini's own testimony concerning his attending Local 100's meetings with President

O'Keefe.

11. The Administrative Law Judge's findings and conclusions that "respondent's action in regard to maintenance department's salaries was not motivated by economic considerations, but was a reprisal because of the maintenance department employees' opposition to Local 100 and their leanings toward another labor organization . . ." was a violation of "Section 8(a) (1), (2), and (3) of the Act" (JD 11, L. 40-44) is totally without evidenciary basis in the record, inasmuch as there is not one word of testimony in the record that the maintenance department employees were opposed to Local 100. As has been previously pointed out, the only testimony on the subject is by Squicciarini, who testified that he merely stated that he felt the maintenance employees would better be represented by Local 30 or Local 775. Indeed, the record shows that all maintenance employees ultimately attended Local 100 union meetings. Moreover, the testimony of Napolitano and Conlon is clearly to the effect that the early Spring months are the worst time of year for the Respondent's business and that all of the reductions in pay and even layoffs occurred for these economic reasons. The general counsel offered absolutely no evidence whatsoever to contradict or deny this testimony. It is, therefore, respectfully submitted that the Administrative Law Judge's ruling that Respondent's action in regard to maintenance department's salaries "was not motivated by economic considerations but was a reprisal because of the maintenance department's employees' opposition to

Local 100," is totally without any foundation or basis by reason of any document or testimony contained in the record. Such a finding is clearly erroneous and manifestly against the weight of the evidence and should be set aside by this Board.

Respondent specifically takes exception to each and every recommendation set forth on Page 12 of the Administrative Law Judge's decision under the heading "IV THE REMEDY", for the reasons which follow in addition to the reasons hereinbefore specifically stated:

Respondent excepts to the recommendation that Respondent be ordered to decease and desist from engaging in unfair labor practices, inasmuch as said alleged unfair labor practices were erroneously and improperly concluded by the Administrative Law Judge to have stemmed from the Settlement Agreement's purported "setting aside" of the old contract with Local 100 of March 4, 1972. Such a conclusion, as heretofore pointed out, is totally without legal foundation and, accordingly, any recommendation based upon such findings must be set aside.

Respondent specifically excepts to the recommendation that Squicciarini be offered immediate and full reinstatement to his former job or to a substantially equivalent position without prejudice to his seniority or other rights or privileges, inasmuch as his discharge was not discriminatory but was for cause. Respondent, for the same reasons, further excepts to the further recommendation that Respondent be

ordered to reimburse Squicciarini for any loss of pay he may have suffered as a result of his discharge.

Respondent specifically excepts to the recommendation that employees Staats, Squicciatini and Eckert be made whole for losses suffered by reason of having their rates of pay "illegally reduced" by Respondent, inasmuch as these rates of pay were properly and legally reduced by Respondent because of distressed economic conditions of the Respondent's business at the time in question.

Respondent specifically excepts to the recommendation, beginning at J.D., 12, L. 24, "practical remedy" to have Respondent reimburse employees for any "dues, initiation fees or other monies they paid to Local 100 from November 2, 1972, the date of the execution of the settlement agreement, to a date thirty days after the effective date of the July 1973 contract, or the beginning of their employment, whichever is later, with interest", because such recommendation not only exceeds the remedies prayed for in the Consolidated Complaint, but such recommendation is again based on his primary erroneous conclusion, as has heretofore been pointed out, that the settlement agreement of November 1972 set aside, or extinguished, the old contract of March 4, 1972.

Employer's Cross-Exceptions and Argument in Opposition to Decision and Order of Administrative Law Judge

Respondent specifically excepts to conclusions of law numbered 3, 4, 5 and 6, appearing at JD 13 and submits that a fair reading of the entire record of this hearing and a fair review of all the evidence submitted, shows that Respondent did not threaten employees with discharge unless they joined Local 100, that the discharge of Squicciarini was for cause and was not in violation of the Act; that reducing the pay of Staats, Eckert, Squicciarini and other employees of the maintenance department was the result of distressed economic conditions of Respondent's business for that period of the year, and was not an unfair practice within the meaning of the Act.

For the same reason Respondent specifically excepts to each of the items 1(a) through 1(d) of the Administrative Law Judge's Cease and Desist Order commencing under the heading, "ORDER" on JD 13 and to Items 2(e) and 2(f) of the said Cease and Desist Order appearing on JD 14-15 for the reasons that, as hereinbefore stated, there is absolutely no evidence in the record that the Respondent at any time (a) contributed support and assistance to Local 100 or any other labor organization; (b) that Respondent has, did, or continues to discharge employees or discriminate against them because of their union activities; (c) that Respondent reduced the pay of employees herein because they opposed Local 100 or desired another labor organization to represent them; (d) that Respondent interfered with, restrained or coerced employees in their exercise of their rights guaranteed in Section 7 of the Act, except to the extent that such rights

may be affected by an agreement requiring membership in a labor organization as a condition of employment, as authorized in Section 8(a) 3 of the Act.

Respondent specifically excepts to the Items 2(a), (b), (c), (e), and (f) of the said Cease and Desist Order appearing on JD 14-15 for the reasons that: (a) Squicciarini was discharged for cause and is not entitled to recover any loss of pay he may have suffered thereby; (b) the reduction in the pay of Squicciarini, Staats, and Eckert and any other employees in the maintenance department was proper and was made for economic reasons brought about by the reduction in Respondent's business in the Spring of 1973, and further, that any payment to any employee other than Squicciarini, Staats and Eckert, goes beyond the scope of the Consolidated Complaint in this matter and is, accordingly, improper and is a remedy which has not been sought in this proceeding; (e) that the notice marked "Appendix" be set aside and that Respondent not be required to post said notice inasmuch as the provisions thereof relate to the erroneous conclusion of the Administrative Law Judge that Respondent did engage in unfair labor practices, which conclusion is clearly not warranted by the evidence in this record.

CONCLUSION

Accordingly, it is urged that the decision, findings, recommendations and order of the Administrative Law Judge

should be set aside and reversed by the Board, and an appropriate Board Order be issued consistent with said exceptions contained herein.

Dated: New York, N.Y.
April 19, 1974

Respectfully submitted,

HYNES & DIAMOND
Attorneys for Respondent
Colonie Hill Ltd.
25 Broadway
New York, N. Y. 10004

TO: John C. Truesdale
Executive Secretary
National Labor Relations Board
Washington, D.C. 20570

Steven Fish
Counsel for the General Counsel
National Labor Relations Board
Region 29
16 Court Street
Brooklyn, New York 11241

Mauro Squicciarini
8 Gaynor Avenue
Nesconset, New York 11767

James Staats
2944 Lakebrooke Circle, Apt. 304
Lansdowne, Maryland 21227

Local 100 Service Employees
Int'l Union, AFL-CIO
549 Broadway
Massapequa, New York

William Pitassy
549 Broadway
Massapequa, New York

BOARD'S DECISION AND ORDER

MFK

212 NLRB No. 114

D--8839
Hauppauge, N.Y.

UNITED STATES OF AMERICA

BEFORE THE NATIONAL LABOR RELATIONS BOARD

COLONIE HILL LTD.

and

MAURO SQUICCIARINI, an Individual — Case 29--CA--3457

and

JAMES STAATS, an Individual — Case 29--CA--3462

DECISION AND ORDER

On February 25, 1974, Administrative Law Judge George J. Bott issued the attached Decision in this proceeding. Thereafter, the General Counsel filed exceptions and a supporting brief, and Respondent filed cross-exceptions and a supporting brief.

Pursuant to the provisions of Section 3(b) of the National Labor Relations Act, as amended, the National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

The Board has considered the record [1] and the attached Decision in light of the exceptions and briefs and has decided to affirm the rulings, findings, [2]

1/ Local 100 Service Employees International Union, AFL--CIO, appeared at the hearing as Party in Interest.

2/ In sec. III, B, of his Decision, the Administrative Law Judge referred to Mauro Squicciarini's having signed an authorization card on behalf of Local 775. He clearly meant to refer to Operating Engineers Local 30, and we hereby correct the inadvertent error.

and conclusions[3] of the Administrative Law Judge and to adopt his recommended Order, as modified below.

The Administrative Law Judge concluded that Respondent violated Section 8(a)(1) and (2) by threatening employees with discharge unless they joined Local 100 Service Employees International Union, AFL—CIO (hereafter Local 100), and also violated Section 8(a)(1), (2), and (3) by discriminatorily discharging and refusing to reinstate Mauro Squicciarini[4] and by reducing the pay of maintenance department employees. Respondent excepted to each of these conclusions. We find merit only in its exception as to the reduction in pay.

It is undisputed that in April 1973 and the months following, Respondent was experiencing severe financial difficulties which resulted in its laying off well over 100 employees, approximately one-fourth of the total employee complement, during that period. The layoffs did not affect the maintenance employees. Rather, during April Respondent reduced their pay, beginning with that of Lockhart, the department supervisor, which was cut from $360 to $300 per week. Shortly afterwards, the pay of the other maintenance employees, Squicciarini, Staats, Eckert, and

---

3/ In concluding that Respondent violated Sec. 8(a)(2) of the Act by continuing to enforce the union-security provisions of a contract which it had promised, pursuant to an informal settlement agreement of November 1972, to cease enforcing, the Administrative Law Judge characterized the contract as having been "the fruit of Respondent's [presettlement] unfair labor practices," and stated that to permit continued enforcement of it "would be to condone a continuation of the very unfair labor practices which the settlement agreement was designed to cure . . . ." Since the complaint did not allege that any presettlement conduct by Respondent was unlawful and the lawfulness of that conduct was not litigated, it is improper to conclude from the mere fact that Respondent executed a settlement agreement that its presettlement conduct was unlawful. We therefore do not rely on the above observations of the Administrative Law Judge in adopting his finding that Respondent violated Sec. 8(a)(2).

4/ Although the Administrative Law Judge found that Respondent unlawfully discharged Mauro Squicciarini and ordered it to post a notice that it would reinstate him to his former or a substantially equivalent position, he inadvertently failed to include in his Order a provision as to Squicciarini's reinstatement. The General Counsel excepted to this omission, and we shall correct the recommended Order accordingly.

Cabanas, was uniformly reduced to $4.10 an hour. Respondent contends that, as Walter Conlon, a high managerial official, testified, the pay reductions were implemented to ameliorate Respondent's deteriorating financial condition.

The circumstances surrounding the pay reductions support Respondent's contention. Their timing strongly indicates that an economic motive underlay them, since they were coincident with a general layoff and severe financial problems.[5/] Most importantly, the reductions affected all maintenance employees, including those who were indisputably Respondent's partisans.[6/] While, as the Administrative Law Judge seems to imply, Respondent could conceivably have effected economies in maintenance by a layoff, we see no reason to infer that the choice of a wage reduction rather than a layoff evidenced either a discriminatory motive or a lack of concern about a need to reduce maintenance expenses. We also note that, consistent with Respondent's asserted defense, when the cuts were made, Conlon was told they were required because of Respondent's financial condition.[7/]

The only direct evidence of unlawful motivation for the pay reductions is Squicciarini's statement, which the Administrative Law Judge credited, that

---

5/ The Administrative Law Judge found the timing of the cuts to be a significant indicator of unlawful motive because one employee affected, Staats, had in the previous month refused to join Local 100. The record does not indicate that Staats refused to join, but only that he failed to join Local 100 at the instant he was told he would have to join. He joined Local 100 later, attended at least one Local 100 meeting, an act which was not required of him, and there is no evidence he had not joined Local 100 by the time the cuts were made.

6/ Respondent cut the pay of Lockhart substantially, yet it had only 2 months before made him department supervisor in preference to Squicciarini. It also cut the pay of Cabanas, a relative of Walter Conlon, a high management official.

7/ The Administrative Law Judge found that the asserted economic basis for the cuts conflicted with a statement which Squicciarini testified Local 100's president, O'Keefe, had attributed to Respondent's president; namely, that the wage reductions were instituted because Respondent no longer needed skilled mechanics. Squicciarini's testimony in this regard was plainly hearsay and is of no substantial probative value.

Respondent's personnel director, Troeckel, told him that Staats' and Eckert's salaries were reduced because they were against Local 100. That statement, however, is inconsistent with virtually all other record evidence. There is no evidence that Staats or Eckert opposed Local 100 at the time the cuts occurred, and, what is more significant, neither was singled out for a pay reduction or otherwise treated differently from other maintenance department employees. In view of these facts, we are not persuaded that the reduction of Statts' and Eckert's pay was discriminatorily motivated, nor that of other maintenance employees. Since there is insufficient record evidence to support the finding that the reduction of the maintenance employees' pay was anything but economically motivated, we shall dismiss the complaint allegation as to it.

ORDER

Pursuant to Section 10(c) of the National Labor Relations Act, as amended, the National Labor Relations Board hereby adopts as its Order the recommended Order of the Administrative Law Judge, as modified below, and hereby orders that Respondent, Colonie Hill Ltd., Hauppauge, New York, its officers, agents, successors, and assigns, shall take the action set forth in the said recommended Order as so modified:

1. Delete paragraphs 1(c) and 2(b), and reletter the remaining paragraphs accordingly.

2. Substitute the following for paragraph 2(a):

"(a) Offer Mauro Squicciarini immediate and full reinstatement to his former position or, if it is not available, to a substantially equivalent position, without prejudice to his seniority and other rights and privileges, and

make him whole for any loss of pay suffered as a result of the discrimination against him."

3. Substitute the attached notice for the Administrative Law Judge's notice.

Dated, Washington, D.C. AUG 6 1974

Edward B. Miller, Chairman

John H. Fanning, Member

Ralph E. Kennedy, Member

(SEAL)

NATIONAL LABOR RELATIONS BOARD

D--8839

APPENDIX

NOTICE TO EMPLOYEES

Posted by Order of the
National Labor Relations Board
An Agency of the United States Government

WE WILL NOT discharge employees or otherwise discriminate against them because of their union or other concerted activities.

WE WILL NOT in any other manner interfere with, restrain, or coerce employees in the exercise of their rights guaranteed in Section 7 of the National Labor Relations Act, as amended, except to the extent that such rights may be affected by an agreement requiring membership in a labor organization as a condition of employment as authorized in Section 8(a)(3) of the Act.

WE WILL offer Mauro Squicciarini immediate and full reinstatement to his former position or, if it is not available, to a substantially equivalent position, without prejudice to his seniority and other rights and privileges, and make him whole for any loss of pay suffered as a result of the discrimination against him.

WE WILL reimburse all present and former employees for any dues, initiation fees, or other moneys they were required to pay to Local 100 from November 2, 1972, to August 1973, which was the period during which we were not permitted to enforce the union-security provision of the March 4, 1972, contract we had with Local 100 because it had been set aside under the terms of a settlement agreement with the National Labor Relations Board.

COLONIE HILL LTD
(Employer)

Dated _____ By _____
(Representative) (Title)

This is an official notice and must not be defaced by anyone.

This notice must remain posted for 60 consecutive days from the date of posting and must not be altered, defaced, or covered by any other material.

Any questions concerning this notice or compliance with its provisions may be directed to the Board's Office, 16 Court Street, Fourth Floor, Brooklyn, New York 11241, Telephone 212--596--3535.